



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846



In Reply Refer To:  
81420-2008-1481-7

JUL 08 2009

Dr. Kathleen A. Dadey  
Chief, California Delta Branch  
Regulatory Branch  
U.S. Army Corps of Engineers  
1325 J Street, Room 1480  
Sacramento, California 95814-2922

Subject: Proposed 500 cfs Increase of Diversion at the State Water Project Delta Facility  
During the Months of July, August and September

Dear Dr. Dadey:

This is in response to the U.S. Army Corps of Engineers' (Corps) June 22, 2009, request to the U.S. Fish and Wildlife Service (Service) for consultation on the extension of the permit from the Corps for increased diversion during 2009, 2010, 2011 and 2012 at the State Water Project in Contra Costa County, California. At issue are effects to the threatened delta smelt (*Hypomesus transpacificus*). The Corps letter was received in our office on June 24, 2009. This response is in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The proposed action will increase the maximum allowable daily diversion rate into Clifton Court Forebay (CCF) to increase from 13,870 acre-feet (AF) to 14,860 AF during the months of July, August and September and the maximum allowable 3-day running average diversion rate would be increased from 13,250 AF to 14,240 AF. The average increase during this period would equate to about 500 cubic feet per second (cfs) per day. The increased diversion rate over the three month period would not exceed 90,000 AF and would not result in any increase in water supply deliveries than would occur in the absence of the increased diversion rate.

The process for allowing and implementing the 500 cfs increase is described in the project description of the Service's 2008 biological opinion to the Bureau of Reclamation (Reclamation) on the operations of the Central Valley Project (CVP) and State Water Project (SWP). Enclosure 1 is an excerpt of the 500 cfs section of the Project Description. A letter from Reclamation dated June 26, 2009 states the description of the proposed 500 cfs operations is included in the Project Description of the 2008 biological opinion. This process shall be followed in order for the 500 cfs pumping to be covered by the biological opinion.



The Service concurs that the effects proposed 500 cfs increase at CCF in the months of July, August and September are included in the Service's 2008 biological opinion on the operations of the CVP and SWP. The process described in the Project Description of the biological opinion must be followed in order for the proposed actions to be covered by this biological opinion.

Therefore, unless new information reveals effects of the project that may affect federally listed species or critical habitat in a manner not identified to date, or if a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

If you have any questions regarding this response on the proposed 500 cfs increase at Clifton Court Forebay for the months of July, August and September, please contact Ryan Olah at letterhead address, (916) 414-6625 or via email at [ryan\\_olah@fws.gov](mailto:ryan_olah@fws.gov).

Sincerely,

A handwritten signature in cursive script that reads "Susan K. Moore".

Susan K. Moore  
Field Supervisor

Enclosure

cc:

Scott Wilson, California Department of Fish and Game, Yountville, CA  
Bruce Oppenheim, National Marine Fisheries Service, Sacramento, CA  
Ronald Milligan, Bureau of Reclamation, Central Valley Office, Sacramento, CA

## Enclosure

Excerpt on the 500 cfs Increase From the 2008 Biological Opinion

***500 cfs Diversion Increase During July, August, and September***

Under this operation, the maximum allowable daily diversion rate into Clifton Court Forebay (CCF) during the months of July, August, and September increases from 13,870 AF to 14,860 AF and three-day average diversions from 13,250 AF to 14,240 AF (500 cfs per day equals 990 AF). The increase in diversions has been permitted and in place since 2000. The current permit expired on September 30, 2008. An application has been made to the U.S. Army Corps of Engineers (Corps) for permitting the implementation of this operation. The description of the 500 cfs increased diversion in the permit application to the Corps will be consistent with the following description:

The purpose of this diversion increase into CCF for use by the SWP is to recover export reductions made due to the ESA or other actions taken to benefit fisheries resources. The increased diversion rate will not result in any increase in water supply deliveries than would occur in the absence of the increased diversion rate. This increased diversion over the three-month period would result in an amount not to exceed 90 TAF each year. Increased diversions above the 48 TAF discussed previously could occur for a number of reasons including:

- 1) Actual carriage water loss on the 60 TAF of current year's Yuba Accord Component 1 Water is less than the assumed 20 percent.
- 2) Diversion of Yuba Accord Component 1 Water exceeds the current year's 60 TAF allotment to make up for a Yuba Accord Component 1 deficit from a previous year.
- 3) In very wet years, the diversion of excess Delta outflow goes above and beyond the Yuba Accord Component 1 Water allotment.

Variations to hydrologic conditions coupled with regulatory requirements may limit the ability of the SWP to fully utilize the proposed increased diversion rate. Also, facility capabilities may limit the ability of the SWP to fully utilize the increased diversion rate.

In years where the accumulated export under the 500 cfs increased diversion exceeds 48 TAF, the additional asset will be held in the SWP share of San Luis Reservoir, as long as space is available, to be applied to an export reduction specified by the fish agencies for the immediate water year (WY). For example, if 58 TAF were exported under the increased diversion during July through September, then 10 TAF of additional asset would be in San Luis Reservoir on September 30. The fish agencies may choose to apply this asset to an export reduction during the early winter or take a risk that space for storing the asset will remain in the SWP share of San Luis Reservoir and be available to be applied to the VAMP or post-VAMP export reduction in the spring. If the asset remains available for the VAMP and post-VAMP shoulder, it would increase the export reduction during that period by an equal amount. In this example, the export would be reduced an additional 10 TAF.

As the winter and spring progress, the SWP share of San Luis Reservoir may fill and the space

will no longer be available to store the asset. If this happens, the asset will be converted to SWP supply stored in San Luis Reservoir and the SWP exports from the Delta will be reduced at that time by the same volume as the asset. Any reductions in exports resulting from this situation are expected to occur in the December-March period.

Implementation of the proposed action is contingent on meeting the following conditions:

1. The increased diversion rate will not result in an increase in annual SWP water supply allocations other than would occur in the absence of the increased diversion rate. Water pumped due to the increased capacity will only be used to offset reduced diversions that occurred or will occur because of ESA or other actions taken to benefit fisheries.
2. Use of the increased diversion rate will be in accordance with all terms and conditions of existing biological opinions governing SWP operations.
3. All three temporary agricultural barriers (Middle River, Old River near Tracy and Grant Line Canal) must be in place and operating when SWP diversions are increased. When the temporary barriers are replaced by the permanent operable flow-control gates, proposed as Stage 1 of the South Delta Improvements Program, the gates must be operating to their specified criteria.
4. Between July 1 and September 30, prior to the start of or during any time at which the SWP has increased its diversion rate in accordance with the approved operations plan, if the combined salvage of listed fish species reaches a level of concern, real-time decision making will be implemented. The relevant fish regulatory agency will determine whether the 500 cfs increased diversion is or continues to be implemented.